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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,096	10/29/2001	Carl E. Whitcomb	WHIT/0002	7255

7590 07/01/2004

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/01/2004

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/075,096
Filing Date: October 29, 2001
Appellant(s): WHITCOMB, CARL E.

Frank J. Campigotto
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/19/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-65 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6202348	Reiger	3-2001
5311700	Thomas	5-1994
EP300578	Van der Goorbergh	1-1989
5852896	Flasch	12-1998
3094810	Kalpin	12-1960
6223466	Billings	5-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,2,4,13-16,18,19,29,30,41,46,48,49,53,63 are rejected under 35 U.S.C.

102(b). This rejection is set forth in a prior Office Action, mailed on 1/14/04.

Claims 3,5-12,17,20-28,31-40,42-45,47,50-52,54-62,64,65 are rejected under 35

U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 1/14/04.

(11) Response to Argument

Appellant argued that Berlit does not disclose a root-tip-trapping material or a porous fabric.

On page 1, line 130 and page 2, lines 1-11, Berlit states that layer 11, which the Examiner is considering being a root-tip-trapping material, can be made out of polypropylene, which is the same material as claimed by Appellant in claim 9 for a porous fabric. Therefore, Berlit's layer 11 is a root-tip-trapping material. In addition, as responded in the final office action mailed on 1/14/2004, polypropylene is a fabric material, i.e. fabric of fibers, thus, it is inherent that the material allows air to flow therethrough, thus, making the material porous. Appellant argued toward claim 8 which

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claims spun bonded, needle punched fabric, but claim 8 was never rejected with Berlit alone. Berlit was combined with Reiger for a teaching of spun bonded, needle punched fabric. Claim 1 is very broadly claimed as a root-tip-trapping material, therefore, Berlit alone teaches this limitation.

Appellant argued that the layers of Berlit's invention are laminated by co-extrusion, therefore, the layers are solid and form relatively smooth and continuous interfaces between layers and relatively smooth and continuous inner and outer surfaces.

Berlit's laminate by co-extrusion is for bonding the boundary between layers and not actually making the layers smooth and continuous surfaces as alleged by Appellant. Nowhere in the disclosure of Berlit does he indicate such smoothness and continuous surfaces. All Berlit states is that the layers are bonded together by laminate by co-extrusion (page 1, lines 28 & 100), just as the same claimed by Appellant in claim 15. Lamination by co-extrusion as in Berlit is still lamination to bond the layers together, which is similar to claim 15 of Appellant. In addition, on page 1, lines 100-105, pigment 19 is embedded in layer 11, thus, layer 11 cannot be smooth and continuous because of pigment 19 being embedded therein. Furthermore, page 1, line 112, indicates that the barrier of Berlit is to resemble a clay pot, thus, a clay pot is not smooth surface at all; instead, the clay pot has rough surface.

Appellant argued that Berlit does not disclose ranges as claimed in claims 3,65,5,6,50,7,51,25,26,64,31,32.

It is true that Berlit or Berlit in combination of other references does not claim these ranges. However, the Examiner believes that it would have been obvious to one of ordinary skill in the art through testing and experimentation to discover these ranges, depending on the plant roots being grown in the container or the like. In addition, throughout Appellant's specification, there is not one critical reason as to why Appellant has to have these values. Instead, throughout the specification, Appellant states that these ranges are preferred only and no reason to follow as to why they are preferred. It appears that these ranges are derived by Appellant through general experimentation on the applicable opening sizes for the type of plants being studied.

Appellant argued that Berlit has attempted to solve the problem associated with thin-walled containers that allowed too much light to penetrate the thin walls and damage the root systems contained in the plant containers, which is opposite to what Appellant's desired to encourage healthy root growth.

Page 1, lines 104-105 of Berlit clearly states that Berlit is interested in keeping the roots healthy, which is the same motivation as that of Appellant.

Therefore, Berlit does address the same problem sought by Appellant, and that is to promote healthy root growth.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



Son T Nguyen
June 25, 2004

Conferees

pmp

~~mjc~~ JLG

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